

Application No. 09/980,388
Applicants: Inge Krause et al.
Amendment in Response to Office Action dated July 11, 2003

REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the amendment above and the following comments.

At the outset, Applicants wish to address the showing required under 37 CFR §1.116(a) regarding why the amendment above is necessary and was not presented earlier. The amendment above is necessary to overcome the prior art rejection. In this regard, the thrust of the Examiner's rejection appears to be the claimed "preventing" aspect to be obvious over the cited reference. Accordingly, by deleting the "preventing" aspect of the invention, this should remove the prior art rejection. Applicants reserve the right to prosecute the "preventing" aspect in a divisional application. The amendment was not presented earlier because the amendment is responsive to a new ground of rejection made for the first time in the final rejection and since this is the first substantive response to the final rejection, obviously the amendment above could not have been presented earlier.

Claims 12-28 are pending. Claim 12 was amended in response to the Examiner's rejections under 35 U.S.C. 103(a). A mark-up showing the changes that have been made to these claims using strikethrough and underlining is attached. It is believed that no new matter has been added.

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Rejections under 35 U.S.C. 103(a)

The Examiner rejected the claims under 35 U.S.C. 103(a) as being obvious over Beiersdorf AG (WO 96/18352). It would appear the thrust of the Examiner's rejection is that the preventing aspect is technically met by the cited reference. In response, Applicants have deleted the "preventing" aspect. The reference cites all types of skin conditions for which the composition is useful but nowhere is there any suggestion for the composition to *alleviate* sunburn of the skin. Accordingly, the Instant claims cannot be rendered obvious by the instant claims.

At the bottom of page 2 of the Office Action, Applicants note that an official translation would be forthcoming. Applicants believe U.S. Patent 5,952,373 may be an equivalent.

In view of the foregoing, Applicants submit that the Examiner would be fully justified to reconsider and to withdraw this rejection. An early notice that this rejection has been reconsidered and withdrawn is, therefore, earnestly solicited.

Conclusion

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested

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to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

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Respectfully submitted,

NORRIS MCLAUGHLIN & MARCUS, P.A.

OFFICIAL

By David D. Kim
David D. Kim
Reg. No. 53,123

220 East 42nd Street
30th Floor
New York, New York 10017
(212) 808-0700

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Amendment under 37 CFR § 1.116 (8 pages total) is being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: October 14, 2003

By David D. Kim
David D. Kim